

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROGACIANO GONZALES-MENDOZA,

Petitioner,

vs.

RICHARD MORGAN,

Respondent.

NO. CV-05-5065-CI

ORDER ADOPTING REPORT AND  
RECOMMENDATION, DISMISSING  
PETITION AND DENYING PENDING  
MOTIONS AS MOOT

BEFORE THE COURT is Petitioner's "Objections to Magistrate Judge's Report and Recommendations" (Ct. Rec. 10). Magistrate Judge Imbrogno recommended dismissal of the Petition on August 18, 2005, finding Petitioner had failed to demonstrate extraordinary circumstances beyond his control prevented him from timely filing his federal habeas petition. *See Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir. 1999).

Petitioner's assertion that the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) does not apply to a decision of the Indeterminate Sentencing Review Board is without merit. The Ninth Circuit has held, "§ 2244's one-year limitation period applies to all habeas petitions filed by persons in 'custody pursuant to the judgment of a State court,' 28 U.S.C. § 2244(d)(1), even if the petition

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1 challenges a pertinent administrative decision rather than a state  
2 court judgment." *Shelby v. Bartlett*, 391 F.3d 1061, 1063 (9th Cir.  
3 2004).

4 After review of the record and Petitioner's Objections<sup>1</sup>, the  
5 court finds he has failed to demonstrate an equitable basis to toll  
6 the limitations period under the AEDPA. Therefore, **IT IS ORDERED** the  
7 Report and Recommendation (Ct. Rec. 9) is **ADOPTED** in its entirety. **IT**  
8 **IS FURTHER ORDERED** the Petition is **DISMISSED WITH PREJUDICE** as time-  
9 barred under 28 U.S.C. § 2244(d) and any pending motions are **DENIED as**  
10 **moot.**

11 **IT IS SO ORDERED.** The District Court Executive is directed to  
12 enter this Order, enter judgment, forward a copy to Petitioner at his  
13 last known address, and close the file.

14 **DATED** this 3<sup>rd</sup> day of October, 2005.

15  
16 s/ ROBERT H. WHALEY  
17 CHIEF UNITED STATES DISTRICT JUDGE  
18  
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22 \_\_\_\_\_  
23 'This court agrees that no prisoner should be relegated to  
24 performing sexual acts for other prisoners as payment for assistance  
25 in communicating with the court. Petitioner should contact his  
26 counselors regarding this issue, and/or proceed through the available  
27 grievance procedures, insisting other means of interpretation be  
28 provided to him.

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